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September 20, 1983

RECEIVED

SEP 21 1983

BRIDGEPORT BRANCH

Robert E. Holland, Esquire
Holland, Crowe and Drachman
185 Devonshire Street
Boston, Mass. 02110

Re: Colby vs. BRA

Dear Bob:

Let me confirm here my understanding of the settlement agreement we have reached, subject to full ratification by the Board of the BRA and approval of the pension by the Retirement Board. There are four components to the settlement:

1. Back pay plus interest at 12% through October 1, 1983;
2. Attorney fees in the amount of \$23,000.00;
3. Lump sum payment in the amount of \$34,300.00;
4. Retirement and full pension as of October 1, 1983.

The financial details of each component are as follows:

1. Back pay - In my brief to the Civil Service Hearing Officer at pages 30 and 31, I computed back pay plus interest at the rate of 12% through July 1, 1983 to total \$96,196.00. A photocopy of those 2 pages is enclosed herewith. That amount should be brought current to October 1, 1983 by adding 3% of interest or \$2,886.00 for a total amount of \$99,082.00. Additionally, three months of salary from July through October 1, 1983 total another \$8,575.00, for a total back pay award of \$107,657.00. Since this back pay award is in conjunction with an Order of Reinstatement, we assume that the BRA will wish to take standard employee deductions, and at the minimum we would like the Blue Cross Blue Shield deductions to be taken and then

to be paid in the appropriate fashion by the BRA to Blue Cross Blue Shield. That will permit Mr. Colby to obtain reimbursement from Blue Cross Blue Shield for the premiums he has paid personally over the last 3 years. The BRA might also wish to take the pension deduction. Although Mr. Colby will have to file amended tax returns and pay taxes on this amount, we would prefer income tax withholding not to be taken unless that causes some insurmountable problem to the BRA. Naturally we would expect the cooperation of the BRA in issuing any necessary W2 forms or other indication that this amount is compensation over the 3 years in question.

2. Attorney Fees - We only wish it clear that this \$23,000.00 amount is reimbursement of attorney fees and not compensation, and therefore not taxable.

3. Lump Sum \$34,300.00 - This payment is equivalent to one years salary. It is not, however, compensation and therefore we would not expect any deductions or tax withholding to be taken. The amount should be paid in total to Mr. Colby.

4. Pension - Mr. Colby's agreement to this package is contingent upon a full award of his pension by the Boston Retirement Board. We compute it as follows: His highest three years compensation would include 15 months at a yearly compensation of \$34,300.00 and 21 months at a yearly compensation of \$31,800.00 for the average of \$32,842.00. His age factor is 1.8 and he has 19 years of service which would result in a total pension of \$11,232.00 (1.8 times \$32,842.00 times 19). As a veteran he receives a \$15.00 per month increment multiplied by 19 for an additional \$285.00 amount per year. His full pension would therefore be \$11,517.00 per year. He wishes to elect Option C under which the pension will begin October 1, 1983 and run for his life and upon his death two-thirds of the pension would continue for the life of his wife Janice. We understand Option C includes a factor of roughly 80% of the full pension, so we compute the actual annual pension to be \$9,214.00. Mr. Colby's date of birth was May 25, 1925, his wife Janice was born on November 10, 1925 and they were married on September 7, 1947. This should provide adequate information for the appropriate personnel people at the BRA to do the computations.

We understand this matter will be put before the Board this Thursday, September 22. I have continued the hearing scheduled for this morning for one week. If there are going to be any

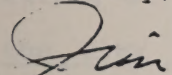
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delays beyond October 1, I suggest that Mr. Colby begin receiving current compensation as of October 1 in order to leave the figures contained in this letter unchanged and in order to make any delays somewhat more palatable. I would hope the entire matter could be resolved by October 1.

Although we have no interest in publicizing the terms of this settlement, I think it would be quite awkward if your client insists on it being treated as confidential.

Please let me know immediately if I have misstated in any way our understanding or if you need any additional information.

Sincerely,



James M. Hughes

jmh/mse
Encl.

BY HAND

IV. THE APPROPRIATE RELIEF.

Mr. Colby has an independent right to reinstatement and back pay under either his bad faith discharge case or his bumping case. Although it is probative of bad faith that his bumping rights were so cavalierly ignored, each right to reinstatement stands on its own merits. The back pay award should be retroactive to December 18, 1980, and he is entitled to interest on his back pay award to that date, at the rate of 12%, under the ruling of Board of Selectmen of Framingham vs. Municipal Court of the City of Boston, 418 N.E.2d 640 (App. Court 1981). As to possible mitigation, Mr. Colby testified that he has continually sought reemployment but has been unable to obtain any except for consulting fees in the amount of \$550.00. (Colby testimony p. 430-32). The law is clear that the burden is on the employer to establish lack of mitigation, and the BRA has not even attempted to do so here. It is clear that Colby is entitled to full back pay. See McKenna v. Commissioner, 199 N.E.2d 686 (1964).

Colby's salary in December, 1980 was \$31,768, or \$610.92 weekly. That amount, brought forward until July 1, 1983 with 12% interest, equals \$96,196.00. The computations are as follows:

- A. Salary Dec. 18, 1980 to Jan. 1, 1981 (2 weeks) \$1,222
 Interest Jan. 1, 1981 to Jan 1, 1982 (6%)* 73

*Since only one-half of the salary would be outstanding over the course of the full year, the interest rate has been halved where appropriate.

Interest Jan. 1, 1982 to Jan. 1, 1983 (12%)	155
Interest Jan. 1, 1983 to July 1, 1983 (6%)	87
Amount Due July 1, 1983	<u>\$1,537</u>

B. Salary Jan. 1, 1981 to Jan. 1, 1982	\$31,768
Interest Jan. 1, 1981 to Jan. 1, 1982 (6%)	1,906
Interest Jan. 1, 1982 to Jan. 1, 1983 (12%)	4,041
Interest Jan. 1, 1983 to July 1, 1983 (6%)	2,263
Amount Due July 1, 1983	<u>\$39,978</u>

C. Salary Jan. 1, 1982 to July 1, 1982	\$15,884
Interest Jan. 1, 1982 to July 1, 1982 (3%)	476
Interest July 1, 1982 to July 1, 1983 (12%)	1,963
Amount due July 1, 1983	<u>\$18,323</u>

Cost of Living increase effective July 1, 1982
Salary changes to \$34,300.00

D. Salary July 1, 1982 to July 1, 1983	\$34,300
Interest July 1, 1982 to July 1, 1983 (6%)	2,058
Amount Due July 1, 1983	<u>\$36,358</u>

Grand Total (A,B,C,D) \$96,196 due July 1, 1983.

As for attorney fees, Section 45 of Chapter 31 provides for \$200.00 per day for seven days of hearings before the BRA and the Civil Service Commission. Colby suggests, however, that full recovery of his attorney fees is called for under Mass. Gen. Laws, Chapt. 231, Sec. 6E, 6F, and 6G. That statute provides for the award of full counsel fees in any "civil action" in which all or substantially all of the adversary's claims were "wholly insubstantial, frivolous and not advanced in good faith." Although the present proceeding is before the Civil Service Commission, it is there on remand from a certiorari proceeding in the Superior Court in which the Superior Court retains jurisdiction. A certiorari proceeding is clearly a "civil proceeding." Section 6F provides for such an award after a

EXECUTIVE SESSION

MEMORANDUM

SEPTEMBER 29, 1983

TO: BOSTON REDEVELOPMENT AUTHORITY

FROM: ROBERT J. RYAN, DIRECTOR

SUBJECT: PROPOSED SETTLEMENT OF LITIGATION
EDWARD COLBY VS B.R.A.

As you are aware, the most recent decision of the Civil Service case concerning Edwin Colby ordered reinstatement plus back pay. We have continued to pursue all of our options on the appeal; however, at the same time, we continued to negotiate with attorneys for Mr. Colby concerning settlement of this litigation.

The attached letter from Attorney James M. Hughes of Devin & Drohan is self-explanatory. In summary, in lieu of the reinstatement, which has been unacceptable to the Authority, the settlement proposes a lump sum payment of one year's salary at what would be Mr. Colby's present salary of \$34,300. As a result, Mr. Colby will obtain the back pay and attorneys fees that were ordered by the Civil Service Commission and will receive, as an alternative to the reinstatement, a one year's severance pay.

The Retirement Board matters are beyond our jurisdiction; however, we will assist in resolving the retirement issues with the Boston Retirement Board. They appear to be approvable by the Retirement Board as a matter of Mr. Colby's right and we see no contingency in that regard.

I recommend that the Director be authorized to execute appropriate documents to confirm the settlement of this matter.

VOTED: That the Director be, and hereby is, authorized to execute appropriate documents for confirming settlement of the litigation between the Authority and Edwin Colby; such settlement to be substantially in accordance with the attached recommendation contained in the three-page letter dated September 20, 1983 from Devin & Drohan and to be concurred in by the Authority's Counsel in this matter.